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D.C., Appellant)	
)	
and)	Docket No. 12-1905
)	Issued: July 25, 2013
U.S. POSTAL SERVICE, POST OFFICE,)	
Port Jefferson, NY, Employer)	
)	

Case Submitted on the Record

DECISION AND ORDER

RICHARD J. DASCHBACH, Chief Judge
COLLEEN DUFFY KIKO, Judge
ALEC J. KOROMILAS, Alternate Judge

On September 18, 2012 appellant's counsel timely appealed the March 27, 2012 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the claim.

The issue is whether OWCP properly terminated appellant's wage-loss compensation and medical benefits effective January 16, 2011.

¹ 5 U.S.C. §§ 8101-8193.

FACTUAL HISTORY

Appellant, a 52-year-old mail processing (window) clerk, has an accepted claim for aggravation of cervical disc disease which arose on September 6, 2007.² The injury occurred when she lifted a bucket and turned to put it on a ledge. Appellant reportedly felt “pulling [and a] pop” in her upper back and neck. She stopped work the day of her injury. Appellant received continuation of pay for 45 days. Afterwards, OWCP commenced payment of wage-loss compensation and ultimately placed her on the period compensation rolls. Appellant has not returned to work since her September 6, 2007 injury.

By decision dated December 29, 2010, OWCP terminated appellant’s wage-loss compensation and medical benefits effective January 16, 2011.³ It based its determination on the August 24, 2010 report of Dr. Bradley L. White, a Board-certified orthopedic surgeon and impartial medical examiner (IME).⁴

Dr. White examined appellant on August 24, 2010 and diagnosed resolved cervical strain and resolved temporary aggravation of preexisting cervical spondylosis (C4-5, C5-6) without evidence of upper extremity radiculopathy. He also diagnosed chronic right-sided neck pain and nonradicular right upper extremity pain without clinical evidence of radiculopathy, peripheral neuropathy or complex regional pain syndrome. Dr. White characterized appellant’s chronic neck pain as a manifestation of preexisting, noncausally-related degenerative cervical spine spondylosis. He stated that the only injury she sustained on September 6, 2007 was a cervical strain. Dr. White further stated that appellant’s underlying, preexisting degenerative findings in the cervical spine were not causally related to the September 6, 2007 employment injury and were only temporarily aggravated by her injury. He explained that any persisting symptomatology was due to the natural history and expected progression of her preexisting cervical condition and there was no permanency with respect to the September 6, 2007 work accident. Dr. White noted that appellant had reached maximum medical improvement and that she should be able to resume her previous window clerk duties full time, but with a 25-pound

² Appellant previously injured her neck on October 2, 2000, which OWCP accepted for cervical disc disease File No. xxxxxx066. Diagnostic studies revealed evidence of cervical disc herniations at C4-5 and C5-6 dating back to October 2000.

³ On November 22, 2010 OWCP issued a notice of proposed termination of benefits.

⁴ OWCP selected Dr. White to resolve a conflict in medical opinion between appellant’s physician, Dr. Dinesh Shukla, a Board-certified neurologist and Dr. Sanford R. Wert, a Board-certified orthopedic surgeon and OWCP referral physician. Dr. Wert examined appellant on March 23, 2010 and diagnosed aggravation of preexisting degenerative changes, cervical spine. He also diagnosed cervical sprain/strain and aggravation of prior “2003” neck injury. Dr. Wert indicated that appellant could perform full-time, light-duty work with a 25-pound restriction on lifting, carrying, pushing and pulling. These were permanent restrictions that he attributed to appellant’s 2003 and September 6, 2007 work-related injuries. Dr. Shukla, appellant’s physician, submitted a July 1, 2010 work capacity evaluation (OWCP-5c). He diagnosed multilevel cervical disc herniations and limited appellant to four hours of work a day. Dr. Shukla imposed a five-pound lifting restriction (half hour) and precluded any pulling, squatting, kneeling, twisting and bending/stooping. Appellant was permitted to push 20 pounds on wheels for a half hour. Dr. Shukla also limited her to a half hour of sitting, walking, standing, climbing and reaching, but no reaching above shoulder level with respect to her right side. Appellant also had right-side limitations (five pounds, half hour) with respect to repetitive movements of the wrist and elbow.

lifting and carrying limitation. He indicated that the work restrictions were permanent in nature. Dr. White also stated that there was no further injury-related treatment required, but appellant may require additional treatment with respect to her preexisting cervical spondylosis. As previously indicated, OWCP terminated appellant's compensation and medical benefits effective January 16, 2011 based on the IME's above-noted findings.

On December 22, 2011 counsel requested reconsideration. He challenged OWCP's reliance on Dr. White's August 24, 2010 opinion and further argued that the claim should be expanded to include cervical disc herniations. Counsel resubmitted several reports from Dr. Shukla dated January 10, February 7 and May 1, 2008. He also resubmitted Dr. Shukla's November 29, 2010 treatment notes. The latter treatment notes, which included part-time, limited-duty work restrictions, were initially submitted by counsel in response to OWCP's November 22, 2010 notice of proposed termination.

In a March 27, 2012 decision, OWCP considered the merits of the claim and denied modification.

LEGAL PRECEDENT

Once OWCP accepts a claim and pays compensation, it bears the burden to justify modification or termination of benefits.⁵ Having determined that an employee has a disability causally related to her federal employment, OWCP may not terminate compensation without establishing either that the disability has ceased or that it is no longer related to the employment.⁶ The right to medical benefits for an accepted condition is not limited to the period of entitlement to compensation for disability.⁷ To terminate authorization for medical treatment, OWCP must establish that the employee no longer has residuals of an employment-related condition that require further medical treatment.⁸

FECA provides that if there is disagreement between an OWCP designated physician and the employee's physician, OWCP shall appoint a third physician who shall make an examination.⁹ For a conflict to arise the opposing physicians' viewpoints must be of "virtually equal weight and rationale."¹⁰ Where OWCP has referred the case to an impartial medical examiner to resolve a conflict in the medical evidence, the opinion of such a specialist, if sufficiently well rationalized and based upon a proper factual background, must be given special weight.¹¹

⁵ *Curtis Hall*, 45 ECAB 316 (1994).

⁶ *Jason C. Armstrong*, 40 ECAB 907 (1989).

⁷ *Furman G. Peake*, 41 ECAB 361, 364 (1990); *Thomas Olivarez, Jr.*, 32 ECAB 1019 (1981).

⁸ *Calvin S. Mays*, 39 ECAB 993 (1988).

⁹ 5 U.S.C. § 8123(a); *see* 20 C.F.R. § 10.321 (2012); *Shirley L. Steib*, 46 ECAB 309, 317 (1994).

¹⁰ *Darlene R. Kennedy*, 57 ECAB 414, 416 (2006).

¹¹ *Gary R. Sieber*, 46 ECAB 215, 225 (1994).

ANALYSIS

OWCP accepted appellant's September 6, 2007 employment injury for aggravation of cervical disc disease. Appellant previously sustained an employment-related neck injury on October 2, 2000, which OWCP accepted for cervical disc disease File No. xxxxxx066.¹² A contemporaneous cervical magnetic resonance imaging scan dated October 13, 2000 revealed disc herniations at C4-5 and C5-6.¹³ Both of appellant's cervical injuries and their corresponding accepted conditions were properly noted in the February 11, 2010 statement of accepted facts (SOAF), which OWCP provided Dr. White, the IME.

When a case is referred to an IME to resolve a conflict, the resulting medical opinion, if sufficiently well rationalized and based upon a proper factual background, must be given special weight.¹⁴ The Board finds that OWCP improperly deferred to Dr. White's August 24, 2010 opinion. The IME's finding that cervical strain was the "only" condition causally related to the September 6, 2007 employment injury is inconsistent with the provided SOAF, which made no mention of cervical strain as being an accepted condition. The February 11, 2010 SOAF clearly stated that OWCP accepted aggravation of cervical disc disease. Because the IME's August 24, 2010 report is not based on a proper factual background, the Board finds that OWCP has not met its burden in terminating appellant's benefits.

CONCLUSION

OWCP improperly terminated appellant's wage-loss compensation and medical benefits effective January 16, 2011.

¹² Although appellant's October 2000 and September 2007 claims involved injury to the same area of the body, OWCP has not combined the two case records.

¹³ Appellant was 40 at the time and there is no indication in the current record that the identified cervical disc herniations were degenerative in nature and preexisted the October 2, 2000 employment injury.

¹⁴ *Supra* note 11.

ORDER

IT IS HEREBY ORDERED THAT the March 27, 2012 decision of the Office of Workers' Compensation Programs is reversed.

Issued: July 25, 2013
Washington, DC

Richard J. Daschbach, Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board